

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BEATRIZ RAMIREZ)	
Claimant)	
VS.)	
)	
NATIONAL BEEF PACKING CO.)	Docket No. 1,063,317
Respondent)	
AND)	
)	
AMERICAN ZURICH INSURANCE CO.)	
Insurance Carrier)	

ORDER

Claimant requests review of the March 18, 2013, preliminary hearing Order entered by Administrative Law Judge (ALJ) Pamela J. Fuller.

APPEARANCES

Chris A. Clements, of Wichita, Kansas, appeared for the claimant. D. Shane Bangerter, of Dodge City, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board has adopted the same stipulations and considered the same record as did the ALJ, with the record consisting of the Evidentiary Deposition Transcript of claimant taken on January 23, 2013; the Stipulation of the Parties, filed with the Division on March 5, 2013, with attachments; and the documents filed of record with the Division.

ISSUES

The ALJ found claimant failed to meet her burden of proving that she met with personal injury by accident arising out of and in the course of her employment with respondent and denied claimant's request for medical treatment and temporary total disability compensation.

The claimant requests review of whether she met with personal injury by accident arising out of and in the course of her employment with respondent. Claimant argues she should not be denied benefits due to her inability to communicate specifically how or when she injured herself.

Respondent argues the Order finding claimant failed to meet her burden of proof to show a personal injury by accident arising out of and in the course of employment with respondent should be affirmed as claimant provided several different versions of how her accident allegedly happened.

FINDINGS OF FACT

The claimant alleges she injured her right leg while working for the respondent on October 26, 2012. She stated that she injured her knee after stepping down from a platform after cleaning her work boots. As she walked away she began to feel pins and needles in her knee. At first, she didn't think anything of it and did not report it. At the end of the day, after she had arrived home, she noticed pain, like small pinches. By Saturday, her knee had begun to swell.

Claimant testified that while doing her job, her upper body twists and her legs sometimes twist. She stands on a platform that can be slippery, but testified she never slipped or fell. At the end of the day, claimant's work boots must be cleaned using a hose with a nozzle. The top, sides and the bottom of the boots are hosed off to remove fat and blood. She testified that when she injured her knee, she had already cleaned her boots and they were wet. She stated that, as she stepped off of the platform onto a wet surface, her foot slid a little forward as if it was going to slip. She did not have pain when this happened, she just felt little pinches. She denies having pain prior to this incident. On Saturday, she noticed pain and swelling in her knee and her leg hurt all day. By Sunday, the swelling was worse and she took Advil for the pain. On Monday, claimant called in sick stating she wasn't going to be able to work. She claims she was referring to the pain in her leg when she said she was sick.

On October 29, 2012, claimant went to see Dr. Eric Hetzel, her family physician. Claimant told Dr. Hetzel she felt shooting pain in her right knee at work Friday, but denied any injury. On November 1, 2012, the claimant returned to Dr. Hetzel. She reported that she began to feel shooting pain in her right knee while at work on October 26, 2012. She ignored the pain, but when she woke up the next day, her right knee was painful and swollen. On exam, there was swelling and tenderness with palpation. Dr. Hetzel returned the claimant to work with no restrictions, stating that her knee pain was resolving. He excused her from work from Monday to Friday.

When claimant returned to work on November 5, 2012, she turned in Dr. Hetzel's off work note, and talked with Danny Briggs, P.A., at the nurse's station. Claimant told Mr. Briggs that she felt pain in her knee while carrying or throwing a piece of meat. She also

said that she didn't have pain or pinching feeling until after she cleaned her boots. She also stated that she was having right knee pain and it started hurting when she was at home. Mr. Briggs ordered an MRI which showed moderate to prominent intra-articular effusion; questionable displaced fragment to the intercondylar notch region simulating a double PCL sign that is often associated with a bucket-handle tear of the medial meniscus; and a small intrinsic tear versus focal tendinosis of the distal quadriceps tendon. Mr. Briggs stated that he did not believe the claimant's condition was work-related, but ordered job accommodation to help with the pain.

On November 5, 2012, claimant was seen by Dr. Hetzel with complaints of knee joint pain and low back pain. The report of that date states no trauma when describing the mechanism of injury. Claimant was alleging pain in the right lumbar low back, with radiating pain into the right knee/thigh/hip. Dr. Hetzel issued a note that the claimant was unable to work that day or the next, but could return to work on Wednesday with no restrictions.

Mr. Briggs met with claimant again on November 8, 2012 and November 12, 2012, he asked the claimant why she went to her personal physician instead of reporting it to a company nurse, and she informed him it was because it was not an accident or injury, and that she just had swelling and pain in her knee at home one day. Mr. Briggs stated, since there was no mechanism of injury from work, he was going to give the claimant a copy of the MRI report and send her out to her personal physician for treatment. The Employer Report of Accident created on November 9, 2012, states that she was working on the stuffer machine and her knee "started hurting from twisting".¹

On November 14, 2012, Dr. Hetzel found that the knee joint pain was improving but she had a possible bucket handle tear of the medial meniscus and a small intrinsic tear vs. focal tendinosis of the distal quadriceps tendon. He referred her to an orthopedist. On November 20, 2012, Dr. Hetzel issued a note stating the claimant continues to be unable to attend work from 10/29/12 through 11/28/12 due to injury/illness and is under his care.

PRINCIPLES OF LAW AND ANALYSIS

In workers compensation litigation, it is the claimant's burden to prove his or her entitlement to benefits by a preponderance of the credible evidence.²

¹ Stipulated records.

² K.S.A. 2012 Supp. 44-501b and K.S.A. 2012 Supp. 44-508(h).

The burden of proof means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.³

The claimant does not know how or when she injured her right knee, only that at some point she began to have pain and swelling in her knee. As noted by the ALJ, there are several varying scenarios of how and when this pain may have started. It is claimant's burden to prove her entitlement to the benefits claimed. Claimant has failed to meet her burden of proving that she met with personal injury by accident arising out of and in the course of her employment.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁴ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2012 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

CONCLUSIONS

This Board Member finds that claimant has failed to meet her burden of proving that she met with personal injury by accident arising out of and in the course of her employment. The denial of benefits by the ALJ is affirmed.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member that the Order of Administrative Law Judge Pamela J. Fuller dated March 18, 2013, is affirmed.

³ *In re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

⁴ K.S.A. 2012 Supp. 44-534a.

IT IS SO ORDERED.

Dated this _____ day of May, 2013.

HONORABLE GARY M. KORTE
BOARD MEMBER

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Pamela J. Fuller, Administrative Law Judge